

BREWERY HILL MINING CO., INC.

IBLA 80-483

Decided August 6, 1980

Appeal from decision of Colorado State Office, Bureau of Land Management, returning, unrecorded, certain documents relating to unpatented mining claims. CMC 155520.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Recordation

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of a claim or site are submitted to BLM for recordation on Dec. 26, 1979, and the filing fee therefor is not paid to BLM until Jan. 23, 1980, the recordation date of the notices is Jan. 23, 1980.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Abandonment

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

3. Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations.

APPEARANCES: Victor L. Abbo, Esq., Boulder, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Brewery Hill Mining Co., Inc., has appealed from the undated decision of the Colorado State Office, Bureau of Land Management (BLM), which returned, unrecorded, certain instruments submitted pursuant to section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), because they had not been received during the statutory time period.

On October 1, 1979, Brewery Hill Mining Co., Inc., located eight lode mining claims ^{1/} in secs. 25 and 26, T. 6 S., R. 77 W., sixth principal meridian, Summit County, Colorado. Copies of the official record of the location notices were submitted to BLM December 26, 1979, together with a cashier's check in the amount of \$16 as payment of the service fees. The copies of the notices and fee were returned by BLM to the locator with advice that the service fee is \$5 per claim. Right of appeal was allowed, but no appeal was then taken. The instruments thereafter were resubmitted to BLM January 23, 1980, with the proper service fee of \$40. The documents were again returned, unrecorded, to the locator as being submitted too late.

[1] Regulations implementing section 314, FLPMA, supra, are contained in 43 CFR subpart 3833. Section 3833.1-2(b) requires that, for mining claims located after October 21, 1976, a copy of the official record of the notice of location must be filed in the proper office of BLM within 90 days following date of location. "Filed" means being received and date-stamped by BLM. Section 3833.1-2(d) states that each claim recorded with BLM shall be accompanied by a \$5 service fee. Without payment of the full service fee, there is no recordation of the mining claim. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979) ^{2/}; Phyllis Wood, 46 IBLA 309 (1980); Joe B. Cashman, 43 IBLA 239 (1979). Thus, as the full service fee of \$5 per claim was not tendered until January 23, 1980, it must be held that the date of recordation of the eight claims with BLM cannot be

^{1/} The names of the lode mining claims are: Budweiser, Coors, Pabst, Michelob, Victor, Marone, Pie, and Leeper.

^{2/} On appeal, Topaz Beryllium Co. v. United States, No. 79-2255, (10th Cir. Nov. 21, 1979).

considered to have occurred earlier than that date. Because no appeal was taken from the BLM decision returning the notices for reason of insufficient service fees, that decision is final. The relief sought by appellant that some of the location notices be accepted for recordation as timely filed may not now be granted. Cf. Robert L. Steele, 46 IBLA 80 (1980); Ann Wamke, 45 IBLA 305 (1980).

[2] Section 3833.4 provides that failure to file any instrument required by FLPMA within the time prescribed shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void.

[3] Appellant suggests the insufficient tender of service fees which accompanied the first submission of the location certificates was merely a ministerial error. This issue should have been raised by appeal from the original decision, which has become final. It is axiomatic that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Robert W. Hansen, 46 IBLA 93 (1980). Appellant's excuse provides no exception to this rule. The statute gives no authority for waiving the effect of claimant's failure to meet the requirements, nor do we know of any other source of such authority. As appellant did not comply with the statutory requirements relating to recordation of unpatented mining claims, the subject claims are void.

We point out in closing that appellant may relocate these claims and file the proper notices of this as provided in 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming that the land is open to location of mining claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joseph W. Goss
Administrative Judge

